per proceedings against him in bankruptcy, but they had no right on that ground to attach his property in a state court.

Our statute provides that "all conveyances or assignments of any estate in lands or of goods," &c., "made or suffered with intent to hinder, delay or defraud creditors," &c., "shall be void as to the person sought to be defrauded. The provisions of this act shall not be construed to affect the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or assignor, or of the fraud rendering void the title of such grantor or assignor:" 1 R. S. 1876, sects. 17–20.

The attaching creditors and the defendant had a right to show that William Sutherland sold the goods to the plaintiff in violation of the statute above set out, for in such case they had a right to seize them on the attachment in the hands of the plaintiff. But they had no right to show that the sale was made in violation of the Bankrupt Law, for that would not authorize such seizure.

Judgment affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
ENGLISH COURTS OF LAW AND EQUITY.[2]
SUPREME COURT OF ERRORS OF CONNECTICUT.[3]
SUPREME COURT OF ILLINOIS.[4]
SUPREME JUDICIAL COURT OF MAINE.[5]

ACTION.

Party to.—If one wishes to intervene and become a party to a suit in which he is interested he must not only petition the court to that effect, but his petition must be granted; and while it is not necessary for him to show that he has actually been admitted by an express order entered upon the record, he must at least make it appear that he has acted or has been treated as a party: *Ex parte Cutting et al.*, S. C. U. S., Oct. Term 1876.

Where a person has filed a petition to be allowed to intervene and become party to an action, but he does not show that his petition has been

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 3 or 4 Otto.

[2] Selected from the last numbers of the Law Reports.

[3] From John Hooker, Esq., Reporter; to appear in 43 Conn. Reports.

[4] From Hon. N. L. Freeman, Reporter; to appear in 79 Illinois Reports.

[5] From J. D. Pulsifer, Esq., Reporter; to appear in 66 Maine Reports.

granted, a mandamus to the court to allow him to appeal from the judgment or decree in said action will be refused: *Id.*

ADMIRALTY.

Territorial Waters—Offence within Three Miles of English Coast—Manslaughter—English Statutes.—The prisoner was indicted at the Central Criminal Court for manslaughter. He was a foreigner and in command of a foreign ship, passing within three miles of the shore of England on a voyage to a foreign port; and whilst within that distance he ran his ship into a British ship and sank her, whereby a passenger on board the latter ship was drowned. The facts of the case were such as to amount to manslaughter by English law: *Held*, by the majority of the court, that prior to 28 Hen. 8, c. 15, the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limit of three miles from the shore of England; that that and the subsequent statutes only transferred to the common-law courts the jurisdiction formerly possessed by the admiral; and that, therefore, in the absence of statutory enactment, the Central Criminal Court had no power to try such an offence. Also, by some of the judges on the ground that, by the principles of international law, the power of a nation within three miles of its coasts is only for certain limited purposes; and that Parliament could not, consistently with those principles, apply English criminal law within those limits. *Held*, contra, by some of the minority, that the sea within three miles of the coast of England is part of the territory of England; that the English criminal law extends over those limits; and the admiral formerly had, and the Central Criminal Court now has, jurisdiction to try offences there committed, although on board foreign ships. By others of the minority, that the prisoner's ship having run into a British ship and sank it, and so caused the death of a passenger on board the latter ship, the offence was committed on board a British ship, and, therefore, the Central Criminal Court had jurisdiction: *The Queen* v. *Keyn*, Law Rep. 2 Exch. (C. C. R.)

AGENT.

Note signed by.—Where the names of the principal and agent both appear upon an instrument, it will be held to be the bill or note of him who signs it, unless it satisfactorily appears that he signed it in a mere ministerial character, intending to bind another: *Powers* v. *Briggs*, 79 Ill.

ASSUMPSIT.

Use and Occupation—Evidence of Possession.—The defendant engaged desk room in a part of an office of the plaintiffs, at a rent of $250 per year, the term to begin on the 1st of April following. During the month of April he was several times at the office, sometimes alone and sometimes with a person in his employment or in partnership with him; spoke to the agent of the plaintiffs in the office about a railing to be made and as to the place to put his sign, though the railing was never made nor his sign put up; also engaged the agent to act for him in attending to inquiries and in keeping things left for him in his absence; and on one occasion left some parcels at the office; and placed his business cards in the front window, describing his office as at that place.

In assumpsit brought for use and occupation, in which the defendant claimed that he had never taken possession, and in which the court below granted a nonsuit for the insufficiency of the evidence, it was held, reversing the judgment on error, that the evidence was sufficient to go to the jury: *Franklin Telegraph Co.* v. *Pewtress*, 43 Conn.

Attorney.

Striking from the Roll.—When an attorney publishes advertisements without any signature, representing that he can procure divorces for causes not known to the law, and without any publicity, and without reference to the residence of the parties, and by such advertisements solicits business of that character by communication through a particular post-office box, by its number, such conduct is a libel on the courts and a disgrace to the attorney, and is calculated to bring reproach upon the profession, and the name of the offending party should be stricken from the roll: *The People* v. *Goodrich*, 79 Ill.

Bankruptcy.

Appellate power of Supreme Court.—The Supreme Court of the United States cannot review the action of the circuit courts in the exercise of their supervisory jurisdiction under the bankrupt law: *Wiswall et al.* v. *Campbell et al.*, S. C. U. S., Oct. Term 1876.

A proceeding to prove a debt is part of the suit in bankruptcy. It has none of the qualities of an independent suit at law or in equity: *Id.*

Bills and Notes. See *Agent.*

Liabilities implied by Endorsement—Restriction only by Express Terms.—The liabilities implied by endorsing a note can be qualified or restricted by express terms: *Adams* v. *Blethen*, 66 Me.

The payee of a negotiable note who signed his name on the back of it under the words, "I this day sold and delivered to Catharine M. Adams the within note," may be held as an endorser of the note in a suit thereon in the name of Catharine M. Adams: *Id.*

Common Carrier.

Express Companies—Duty to Collect on Delivery.—An express company is not only required as a common carrier to transport the goods to the place of destination, but the further duty is enjoined upon them to deliver the goods to the consignee at his residence or place of business. And where directions are given to that effect by the consignor, it becomes the further duty of an express company to collect the price for which the goods were sold by the consignor to the consignee, and return the money to the consignor: *Am. Merchants' Union Express Co.* v. *Wolf*, 79 Ill.

Contempt of Court.

Libel on Grand Jury.—The publication of a libel on a grand jury, or on any members thereof, in relation to any act already done by them in their official capacity, but which has no tendency directly to impede, embarrass or obstruct the grand jury in the discharge of any of its duties remaining to be performed after the publication is made, cannot be summarily punished as a contempt of court: *Storey* v. *The People*, 79 Ill.

CONTRACT. See *Warranty.*

Effect of State of War on.—Cotton was purchased by D. in the parish of St. Landry, in the state of Louisiana, between the 1st of October 1862 and the 1st of April 1863. That territory was then within the rebel lines. D. was there acting as the agent of the rebel government in exchanging its bonds for Confederate notes. *Held*, that D.'s contracts for the cotton were clearly illegal and void and gave him no title: *Desmare* v. *The United States*, S. C. U. S., Oct. Term 1876.

Time—Dates of Bills of Lading.—Defendants, by contract, dated London 17th March, bought of plaintiffs "about 600 tons of Madras rice, to be shipped at Madras or coast for this port during the months of March and (or) April, per Rajah of Cochin." The 600 tons filled 8200 bags, of which 7120 were shipped between the 23d and 28th of February, in three parcels, and the last bill of lading was signed on the latter day; of the other 1080 bags, 1030 were put on board on the 28th of February, and the remaining 50 on the 3d of March, and the bill of lading signed on that day. Defendants having refused to accept the rice: *Held*, reversing the judgment of the Queen's Bench division, that under the circumstances the rice was shipped according to the contract, for that the fact of there being several bills of lading instead of the whole being shipped under one bill made no difference; and that the defendants were bound to accept the rice: *Alexander* v. *Vanderzee* (Law Rep. 7 C. P. 530), followed *Shand* v. *Bowes*, Law Rep. 2 Q. B. D.

CORPORATION.

Borrowing Powers—Directors.—Directors, with borrowing powers, issued debentures at 7½ per cent. discount. Some of the debentures having been taken by a director: *Held*, that the issue of debentures at a discount was not illegal; and that the director was not liable to the company for the difference between 92½ per cent. and par. *In re Campagnie generale de bellegarde: Campbell's Cass*, Vice Chancellor BACON, Law Rep. 4 Chan. Div.

COVENANT.

Encumbrances on Land—Damages.—An attachment resting upon land is an encumbrance upon it within the meaning of the covenant against encumbrances in a deed: *Kelsey* v. *Remer*, 43 Conn.

Where, after the attachment suit has gone into judgment, the covenantee in good faith pays the amount of the judgment, to free the land from the encumbrance, the measure of damages in a suit upon the covenant should be the amount so paid, if not greater than the value of the land, but if greater, then the value of the land: *Id.*

Where an execution upon such a judgment had been levied upon the land attached, but by reason of irregularity in the proceeding, the levy was void, but the lien of the attachment had not yet expired, and the covenantee in good faith paid the amount of the judgment, it was held that the law would give no weight to the fact that the attaching creditor might not have discovered the invalidity of the levy and made a new one before the attachment lien had expired, and that the covenantee was entitled to recover full damages: *Id.*

CRIMINAL LAW.

Embezzlement—Receipt on account of Master.—The prisoner was

the clerk and servant of an insurance company, and head manager at their chief office at L. In the ordinary course of business he received several checks payable to his order from the managers of branch offices, and it was his duty to endorse these checks and hand them over to the company's cashier. Instead of doing so, he endorsed the checks and obtained money for them from friends of his own, who paid the checks into their own banks. He then took the amount so received to the cashier and handed it over to him, saying he wished it to go against his salary, which was overdrawn to a like amount; and he got back from the cashier I. O. U. 1s., which he had previously given for the amount of the overdraft. The prisoner having been convicted of embezzling the proceeds of the checks: *Held*, that the proceeds of the checks, though received not from the bankers, but from third persons, were received on account of the company, and that the prisoner was rightly convicted: *The Queen* v. *Gale*, Law Rep. 2 Q. B. D. (C. C. R.).

DAMAGES. See *Covenant; Sale.*

DEBTOR AND CREDITOR. See *Gift; Husband and Wife.*

DEED. See *Trespass.*

When subsequent Title enures to Grantee.—If a party having the equitable title to land, conveys the same by a quit-claim deed and subsequently acquires the legal title it will enure to his grantee: *Welsh* v. *Dutton*, 79 Ill.

Construction —Lease and Counterpart—Discrepancy between— Clerical Errors in Lease.—By an indenture of lease dated in 1784 and executed by the lessor, he demised certain premises to hold to the lessee and his assigns for the term of ninety-four and a quarter years, yielding and paying therefor during the said term of ninety-one and a quarter years hereby demised a yearly rent. The number of years was not mentioned in any other clause of the lease. But the counterpart executed by the lessee, which was otherwise identical with the lease, had ninety-one in the habendum as well as in the reddendum. In an action by the assignee of the reversion to recover possession against the assignee of the lessee after the lapse of the ninety-one and a quarter years: *Held*, that, there being a manifest clerical error in the lease, the counterpart might be looked at to ascertain where the mistake lay, and that, on the true construction of the lease and counterpart taken together, the "ninety-four" in the lease must be rejected, and the lease read as a grant for ninety-one and a quarter years only: *Burchell* v. *Clark*, Law Rep. 2 C. P. D. (C. A.)

DIVORCE. See *Husband and Wife.*

EMBEZZLEMENT. See *Criminal Law.*

EQUITY.

Aid of Execution.—Before a judgment creditor can resort to a court of equity to aid in the collection of an execution, he must show that all legal remedies have been exhausted: *Howe et al.* v. *Whitney et als.*, 66 Me.

To entitle him to maintain a bill, he must show that judgment has been rendered, execution issued, and that an officer has returned thereon *nulla bona*: *Id.*

Where judgment was obtained in 1870, but no execution shown to have been placed in the hands of an officer; and the execution was renewed eight months after the death of the judgment debtor, and placed in the hands of an officer, who returned it unsatisfied, it was *held* that the plaintiff had not so exhausted all legal remedies as to entitle him to maintain a bill: *Id.*

Remedy at Law—Trespass—Disseisin.—Where a party has a plain, adequate and complete remedy at law, equity will not lie: *Spofford* v *Bangor & Bucksport Railroad Co.*, 66 Me.

The allegations in the bill presented a case of disseisin, the defendant having the actual possession, claiming to hold it by legal right, absolutely and against any rights of the plaintiff. *Held*, that the plaintiff having a plain, adequate and complete remedy at law, by writ of entry and injunction to stay waste, *pendente lite*, under which remedy all his rights could be determined, he could not substitute a bill in equity and dispossess the defendant by injunction: *Id.*

This court will not take jurisdiction in equity to restrain acts of trespass, when the plaintiff is out of possession, except in strong or aggravated instances of trespass which go to the destruction of the inheritance or when the mischief is remediless: *Id.*

When the defendant is in possession under a claim of right or title, as against the plaintiff, and in no way connected with him in estate, a court of equity will not enjoin him from making a lease or conveyance, on the ground that it would be a cloud upon the plaintiff's title: *Id.*

ESTOPPEL. See *Municipal Corporation.*

EVIDENCE.

Declaration by Owners of Real and Personal Estate—What admissible.—Declarations made by the holder of a chattel or promissory note, while he held it, are not competent evidence in a suit upon it, or in relation to it, by a subsequent owner: *Dodge et al.* v. *Freedman's S. and T. Co*, S. C. U. S., Oct. Term 1876.

The declarations of a party in possession of land are competent evidence: 1st. As against those claiming the land under him; 2d. Such declarations are competent only to show the character of the possession of the person making them, and by what title he holds, but not to sustain or to destroy the record title: *Id.*

What the Law is to be determined by the Court—Testimony of Experts not Admissible.—The statute with regard to the execution of wills, prior to the revision of 1875, provided that all wills should be attested "by three witnesses, all of them subscribing in the presence of the testator." *Held*, not to be necessary that the witnesses should also have subscribed in the presence of each other: *Gaylor's Appeal*, 43 Conn.

Upon a question as to the validity of the execution of a will a counsellor of long experience in this state was offered as a witness, to show what had been the practice as to requiring the witnesses to a will to subscribe their names in the presence of each other, for the purpose of showing what the law was upon the point in question. *Held*, that the court properly rejected the testimony: *Id.*

The judge, who alone is to decide as to the law, may if he desires ask the counsel of those who are learned in the law, but a party has no right to introduce such persons as witnesses: *Id.*

EXECUTION. See *Equity.*

FORMER ADJUDICATION. See *Trespass.*

GIFT.

Completed Gift—Revocation—Deposit in Savings Bank—Debtor and Creditor.—A woman deposited $460 in a savings bank for E. K., her niece, the deposit being placed to the credit on the books of the bank of "E. K.—M. K. guardian;" she at the same time informing M. K. the guardian, that she had put the money in the bank for E. K. A bank book was delivered to her by the bank with the deposit so entered upon it, but she retained possession of it, and afterwards had the money transferred back to her by the guardian. The court below found that at the time the deposit was made she intended it as a gift to E. K. *Held* to be a complete gift and beyond her power of revocation: *Kerrigan* v. *Rautigan*, 43 Conn.

At the time the gift was made the donor owed one R. $91, and had no property except the money given to E. K. She was however unmarried, and supported herself by her labor, and was in receipt of a pension of $8 per month and a monthly rent of $3, and she was engaged in no business that required money or involved risk. The debt to R. remained unpaid at the time of her death, two and a half years later. *Held*, that while the gift was void as against R. there was nothing to create a legal presumption of an intent to defraud subsequent creditors: *Id.*

And held that therefore her administrator could not resort to the fund constituting the gift, for the payment of debts of the estate subsequently contracted: *Id.*

GUARDIAN.

Settlement of Account with Ward after Age.—While a court of probate has jurisdiction of a guardian's account, and it may be advisable in many cases that a guardian should settle his account with that court, yet a settlement with the ward, after he becomes of age, if it be a fair one, is sufficient, and satisfies the bond: *Davenport* v. *Olmstead*, 43 Conn.

The duty of a guardian is owing primarily to the minor rather than to the court of probate, and if it be neglected it may and should be enforced in the ordinary tribunals. A suit may be brought on the guardian bond, or an action of account, and if a court of law does not afford an adequate remedy a court of chancery would have jurisdiction: *Id.*

In any suit brought, all the transactions of the guardian with the estate of the ward will be investigated and judgment rendered only for the amount justly due: *Id.*

A guardian having given bond in the court of probate with sureties, died during the minority of the ward. After the ward became of age he had a suit brought on the probate bond against the sureties. *Held*, that the defendants could show, not only expenditures of the guardian, in his lifetime for the benefit of the ward, but any such payments or advances for his benefit from the estate or by the sureties themselves, as would be a just charge against him and reduce the amount which he was equitably entitled to recover: *Id.*

B. was appointed guardian of his son W. and gave bond July 28th 1856. At this time there was due to W. a sum of money upon a policy

of insurance for his benefit on the life of his mother, who had died a few months before. B. had drawn on the insurance company for this sum in his own name on the 10th of July, to be paid on the 30th, and had got the draft discounted at bank on the 10th and received the money. The insurance company accepted the draft, payable at their office, and paid it on the 30th, after the appointment of B. as guardian and the giving of the bond, requiring before payment a receipt for the money signed by B. as guardian of W. *Held*, that the jury were justified upon this evidence in finding that B. received the money as guardian, and after the bond was given: *Id.*

HUSBAND AND WIFE.

Conveyance to Wife in Fraud of Creditors.—If the money which a married woman might have had secured to her own use is allowed to go into the business of her husband and be mixed with his property and is applied to the purchase of real estate for his advantage or for the purpose of giving him credit in his business, and is thus used for a series of years, there being no specific agreement when the same is purchased that such real estate shall be the property of the wife, the same becomes the property of the husband for the purpose of paying his debts. He cannot retain it until bankruptcy occurs and then convey it to his wife. Such conveyance is in fraud of the just claims of the creditors of the husband: *Humes* v. *Scruggs et al.*, S. C. U. S., Oct. Term 1876.

If a husband in a state of absolute bankruptcy, conveys to his wife property fairly worth $15,000 to $20,000, with no present consideration passing, but with a recital of past indebtedness to her to less than a fifth of its value, the transaction is fraudulent and void as to creditors: *Id.*

Desertion—Custody of Children.—Desertion, in the marriage relation, consists in the breaking off of cohabitation with a determination not to renew it: *Bennett* v. *Bennett*, 43 Conn.

A separation resulting from necessity, as from the inability of the husband to provide for the support of his wife, does not constitute desertion: *Id.*

Where, in a suit for a divorce, a wife asked for the custody of two daughters of the marriage, aged five and nine years, and it was found that the husband was of good moral character and attached to the children, but from business incapacity and failure to find employment was unable to support them, but that his mother and sister, who had abundant means and were of the best character, were willing to assume the expense of their support and education, it was held that it was not a case where the court ought to give the custody of the children to the wife on the ground of the unfitness of the husband for their custody: *Id.*

INFANT. See *Husband and Wife.*

Emancipation—Settlement of Infant—Evidence.—Emancipation may be established by contract between the parent and child, as well as otherwise. It must be by consent, express or implied, of the parent if living, and is an entire surrender of all right to the care, custody and earnings of the child, as well as a renunciation of parental duties: *Inhabitants of Lowell* v. *Inhabitants of Newport*, 66 Me.

An emancipated minor does not follow the settlement gained by the parent after such emancipation: *Id.*

Where the father, after acquiring a settlement in Newport, went with

his son to Corinna, and resided there himself ever after, and before acquiring a settlement there emancipated his son, who returned to Newport and resided more than five years during his minority; *held*, that the son's settlement after emancipation was all the while in Newport and not in Corinna, not on the ground of his own residence there, but that he followed the previously acquired settlement of his father; *held* also, that the derived settlement of an emancipated minor is that of his father at the time of emancipation, and not that acquired by his father at any time thereafter: *Id.*

An emancipation of a minor is not to be presumed, but must always be proved. It need not be in writing: *Id.*

Deed to secure Payment for Necessaries Voidable.—A deed by an infant to secure the repayment of money advanced for necessaries is voidable: *Martin* v. *Gale*, M. R. Law Rep. 4 Chan. Div.

Where the plaintiff had advanced money to an infant partly in order to pay for necessaries, and he had by deed assigned to the plaintiff his reversionary interest as a security, in an action brought against the infant on his attaining twenty-one, for an account of moneys advanced to him and expended on necessaries, and for repayment, and also claiming that the same might be declared to be a charge on his reversionary interest: *Held*, that, though the plaintiff was entitled to an account and an order for repayment, the deed was not binding on the infant, and the security could not be enforced: *Id.*

Innkeeper.

Duty to Provide Entertainment—Inn—Traveller—Reasonable Excuse.—The defendant was the proprietor of an hotel. Attached to the hotel and under the same roof and license, but entered by a separate door from the street, was a refreshment bar, in which persons casually passing by obtained refreshments at a counter. The prosecutor, who was a householder living within twelve hundred yards, had been in the habit of coming to the bar with several large dogs, which had been found an annoyance to other guests; and letters had passed in which the defendant had objected to the dogs being brought into the bar, and the prosecutor had asserted his right to bring them. The prosecutor subsequently, while taking a walk for pleasure, went with one large dog to the bar and claimed to be served with refreshments, which the defendant refused him. On an indictment charging the defendant, as an innkeeper, with refusing refreshment to the prosecutor: *Held*, that he could not be convicted: first, because the refreshment bar was not an inn; secondly, because the prosecutor was not a traveller; thirdly, because, had it been otherwise, the defendant had reasonable ground for his refusal. *The Queen* v. *Rymer*, Law Rep. 2 Q. B. D. (C. C. R.)

Insurance.

Condition in Avoidance of Policy—Suicide—Effect of Express Stipulation to be Void whether the Act was done "Sane or Insane."—It is competent for an insurance company to stipulate against an intentional act of self-destruction, whether it be the voluntary act of a moral agent or not: *Bigelow et al.* v. *Life Insurance Co.*, S. C. U. S., Oct. Term 1876.

An action was brought on two policies issued by the defendant on the life of B. Each contained a condition in avoidance, if the insured

should die by suicide, sane or insane. The defendant pleaded that B. died from the effects of a pistol wound, inflicted upon his person by his own hand, and that he intended by this means to destroy his own life. To this the plaintiffs replied, that B., at the time when he inflicted the wound upon his person by his own hand, was of unsound mind and wholly unconscious of the act. To this replication the defendant filed a demurrer. *Held*, affirming the court below, that the replication was bad: *Id.*

INTERNATIONAL LAW. See *Admiralty.*

LEASE. See *Warranty.*

MANDAMUS. See *Action.*

MORTGAGE.

Sale under Trust Deed.—Where a deed of trust authorizes the trustee to sell the land and pay costs, commissions' liens on the land, &c., as well as the particular debt secured, he is authorized to pay, out of the proceeds of the sale, any judgment which may be a lien on the land at the time of the sale, whether it existed at the time the deed was executed or not, and the owner of such judgment can subject any surplus in the hands of the trustee to its payment, after the particular debt secured by the deed of trust is paid: *Hall* v. *Gould*, 79 Ill.

MUNICIPAL CORPORATION.

Estoppel—Limitations.—Whilst municipal corporations are not as respects public rights within ordinary limitation statutes, still the principle of an *estoppel in pais* is applicable in such cases, as this leaves the court to decide the question, not by mere lapse of time, but by all the circumstances of the case, and to hold the public estopped or not, as right and justice may require: *C. R. & P. Railroad Co.* v. *City of Joliet*, 79 Ill.

Nuisance.—A municipal corporation, in the absence of any general laws, either of the city or state, within which a given structure can be shown to be a nuisance, cannot by its mere declaration that it is one, subject it to be removed by any person supposed to be aggrieved or even by the city itself: *Id.*

Issue of Bonds by—Conclusiveness of Legality of Issue.—When by legislative enactment, authority has been given to a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the enactment that the officers of the municipality were invested with power to decide whether that condition had been complied with, their recital that it had been, made in the bonds issued by them, and held by a *bonâ fide* purchaser, is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal: *County Commissioners* v. *Bolles et al.*, S. C. U. S., Oct. Term 1876.

Notice to Agent.—The statute (Gen. Statutes, tit. 15, chap. 2, part 1, sect. 4,) provides that "no individual shall have any claim against a town for assistance furnished to a pauper before he has given notice of the condition of such pauper to one of the selectmen of the town where

the pauper resides." A physician attending upon a pauper, called at the house of one of the selectmen to give him notice of the pauper's condition and of his professional attendance upon him, but not finding him at home, stated the facts to his wife and son who were there, telling them that he had called for the purpose of notifying the selectman, and that he should look to the town for compensation; which information they on the same day conveyed to the selectman. *Held*, to be a sufficient notice under the statute: *Wile* v. *Town of Southbury*, 43 Conn.

The wife and son might be regarded as messengers employed to convey the information to the selectman, and the delivery of the message by them as notice given by the party himself: *Id.*

NEGLIGENCE. See *Railroad.*

Runaway Horses—Contributory Negligence of Plaintiff.—A pair of horses were running along a highway in fright and one of them was killed by falling from a bridge that was defective from want of a railing. *Held*, not to be a decisive fact, against the right of the owner to recover damages of the town, that the horses, at the time they took fright, were hitched outside of the highway upon the owner's premises, and broke loose and ran upon the highway: *Ward* v. *Town of North Haven*, 43 Conn.

NUISANCE. See *Municipal Corporation.*

PLEADING.

Statute—Triple Damages—Need not be set out in Narr.—Increase of Verdict by Court.—The declaration alleging substantially in the language of the statute the doing by the defendant of the acts for which R. S., c. 95, sect. 11, gives the injured party the right to recover in an action of trespass a sum equal to three times the value of the property taken, and alleging that these acts were done against the form of the statute in such case made and provided; *held* sufficient, although the declaration did not set forth a claim for treble damages, and did not refer to the statute by which treble damages were given, nor claim statute damages for the acts complained of: *Black* v. *Mace*, 66 Me.

It is not necessary in an action brought under that section to aver or prove that the defendant knew that the plaintiff was the owner of the land and the property taken therefrom: *Id.*

The jury having been instructed in an action under R. S., ch. 95, sect. 11, giving triple damages for trespass, if they found for the plaintiff, to return a verdict for the actual value of the grass cut and taken away; *held*, that it was proper for the judge to order judgment for thrice the amount of the verdict: *Id.*

RAILROAD.

Negligence.—A person taking a cattle train is entitled to demand the highest possible degree of care and diligence regardless of the kind of train he takes: *Indianapolis & St. Louis Railroad Co.* v. *Horst*, S. C. U. S., Oct. Term 1876.

While the cattle train is not required to be furnished with the same complement of brakes, signals, brakesmen, &c., as a passenger train, yet the same degree of carefulness and diligence, *i. e.*, the highest degree, is required in the use of the means and appliances furnished to the train: *Id.*

Plaintiff, a drover, travelling on a train with his cattle and being in the caboose at the rear of the train, was told by the conductor at night to get out on the roof and get on top of the next car until another caboose was attached. Plaintiff did as he was told, and the train was then run half a mile or so, past a switch and in backing up to the caboose a sudden and violent jar threw plaintiff off and injured him. *Held*, that under these circumstances it was negligence on the part of the defendant to order plaintiff to get on the roof of the car, and it was not contributory negligence on his part to obey such order: *Id.*

Negligence—Evidence.—A railway train drew up at a station with two of the carriages beyond the platform. The servants of the company called out to the passengers to keep their seats, but were not heard by the plaintiff and other passengers in one of these carriages. After waiting some little time, and the train not having put back, the plaintiff got out, and in so doing fell and was injured; for which injury she brought an action against the company: *held*, reversing the decision of the Exchequer Division, that there was evidence of negligence on the part of the defendants to go to the jury: *Rose* v. *The North Eastern Railway Co.*, Law Rep. 2 Ex. D. (C. A.) 248.

SALE.

Of Chattel for specific purpose—Warranty by Vendor of fitness for purpose—No exception as to latent Defect—Measure of Damages.—On the sale of an article for a specific purpose there is a warranty by the vendor that it is reasonably fit for the purpose, and there is no exception as to latent undiscoverable defects, the limitation as to latent defects introduced by *Readhead* v. *Midland Railway Co.*, Law Rep. 4 Q. B. 379, does not apply to the sale of a chattel. The plaintiff ordered and bought of the defendant, a coach builder, a pole for the plaintiff's carriage. The pole broke in use and the horses became frightened and were injured. In an action for the damage, the jury found that the pole was not reasonably fit for the carriage, but that the defendant had been guilty of no negligence: *Held*, that the plaintiff was entitled to recover the value of the pole, and also for damage to the horses, if the jury, on a second trial, should be of opinion that the injury to the horses was the natural consequence of the defect in the pole: *Randall* v. *Newson*, Law Rep. 2 Q. B. D. (C. A.)

SHIPPING.

General Average—Imminent Peril—Auxiliary Steam Pumping Power—Spars and Cargo burnt as Fuel.—A ship sailed from Q. to L., being well equipped and manned for the voyage; she was fitted with a donkey-engine, and had on board a reasonable supply of coals to work it in pumping. The defendants were owners and consignees of a portion of the cargo. During the voyage the vessel met with very bad weather, and in order to avert the loss of the ship and her cargo, the master worked the pumps with the donkey-engine, and the supply of coals failing, he burnt as fuel for the donkey-engine the ship's spare spars and some of the cargo: *Held*, that the defendants were liable to a general average contribution in respect of the spars and the cargo burnt as fuel for the donkey-engine. *Semble*, that if when the vessel sailed she had not had on board a reasonable supply of coals for the donkey-engine for pumping purposes during the voyage, the defendants would not have

been liable to contribute to the general average; for by fitting the vessel with a donkey-engine her owner impliedly represented to the defendants that the master would be supplied with the means of using it in time of peril, and this was a representation which he was bound to fulfil: *Robinson* v. *Price*, Law Rep. 2 Q. B. D.

SLANDER.

Larceny.—The words, "A. B. stole windows from C. D.'s house," are not, of themselves, in their ordinary and popular sense, actionable, as imputing either a charge of larceny or an act of malicious mischief upon real estate: *Wing* v. *Wing*, 66 Me.

Publication.—Evidence that slanderous words were uttered in the presence of members of the plaintiff's family, is proof of the publication of the slander. As much protection is due a man's reputation in the presence of his family as in the presence of strangers, and when slanderous words are uttered of a person in the presence of others, whether members of his family or strangers, they may be said to be spoken concerning him, in the technical sense, and that constitutes a publication of the slander: *Miller* v. *Johnson*, 79 Ill.

Privilege of Witness—Answer as to Credit of Witness.—A witness in a court of justice is absolutely privileged as to anything he may say as a witness having reference to the inquiry on which he is called as a witness. A statement, as to another matter, made to justify the witness in consequence of a question going to the witness' credit, has reference to the inquiry within the above rule. Defendant, an expert in handwriting, gave evidence in the trial of D. V. M., that in his opinion, the signature to the will in question was a forgery. The jury found in favor of the will, and the presiding judge made some very disparaging remarks on defendant's evidence. Soon afterwards defendant was called as a witness in favor of the genuineness of a document, on a charge of forgery before a magistrate. In cross-examination he was asked whether he had given evidence in the suit of D. V. M., and whether he had read the judge's remarks on his evidence. He answered, "Yes." Counsel asked no more questions, and defendant insisted on adding, though told by the magistrate not to make any further statement as to D. V. M.: "I believe that will to be a rank forgery, and shall believe so to the day of my death." An action of slander for these words having been brought by one of the attesting witnesses to the will: *held*, that the words were spoken by defendant as a witness, and had reference to the inquiry before the magistrate, as they tended to justify the defendant, whose credit as a witness had been impugned; and that the defendant was, therefore, absolutely privileged: *Seaman* v. *Netherclift*, Law Rep. 2 C. P. D. (C. A.).

SPECIFIC PERFORMANCE. See *Warranty*.

SUNDAY.

A loan of money made on the Lord's day is void. Whether the promise to repay be in writing, verbal or implied, it cannot be enforced: *Meader* v. *White*, 66 Me.

TELEGRAPH COMPANY.

Liability for Damages resulting from Misdelivery of a Telegram.—No

action will lie against a telegraph company at the suit of the receiver for the misdelivery of a telegram, unless there be either a contract between him and the company, or (possibly) fraud on their part in the transmission of it: *Dickson* v. *Reuter*, Law Rep. 2 C. P. Div.

TRESPASS. See *Equity*.

Deed—Interpretation—Former Recovery.—In trespass *quare clausum* where the close is described as situated in the town of B., county of P., the writ is amendable by describing the close as situated in the town of M., an adjoining town in the same county: *Haynes* v. *Jackson*, 66 Me.

Where a tract of land embraced both upland and meadow, and a deed of the whole tract reserved the meadow land on the westerly end of said tract extending to the highland on said tract, and recited that said excepted *parcel* was to be located and the boundaries fixed by appointees named, when it fact there were two meadows on the westerly end of the tract with a belt of highland between them: *Held*, 1. That the reservation was of only one of the meadows and that the second one lying to the west of the belt of highland was not reserved; 2. That the appointees named had the power to locate and fixed the boundary by the highland: *Id.*

In a former action of trespass *quare clausum*, on the same close, in this court, in which the present plaintiff and another were plaintiffs and the present defendant and another were defendants, made law on report conditioned that if the line as agreed upon by appointees named was binding upon the parties a default was to be entered, if not, a nonsuit; the full court ordered a nonsuit. *Held*, to be no bar to this action: *Id.*

TRUST. See *Mortgage*.

WARRANTY.

Lease of Coal Land—Failure of Vein—Specific Performance.—A., on the application of B. and C., agreed to grant them a lease of a vein or seam of coal, called S. vein, "about two feet thick, with the overlying and underlying beds of clay," on and under a farm called X., at 100*l.* per annum as certain or dead-rent, and royalties of 9*d.* per ton for the coal and 4*d.* per ton for the clay; the lessees to have any part of the farm at the rent of 10*l.* per acre, and to expend not less than 500*l.* in the erection of a manufactory and buildings for the purpose of working the coal and clay; way-leave of 1*d.* per ton for foreign coal and clay; lessees to have power to determine a lease at the end of three years on giving one year's notice. On action by A. for specific performance, B. and C. alleged that the S. vein did not exist under the farm, and it was proved that on a search it had not been found, but counter evidence was given to show that the searches were insufficient: *Held* that, under the agreement, B. and C. had, in consideration of the dead-rent reserved, obtained license to enter and search for the vein, but not a warranty that such a vein was to be found; and, accordingly, that A. was entitled to specific performance of the contract whether the S. vein existed or not: *Jefferys* v. *Fairs*, V. C. Bacon, 4 Chan. Div.

WITNESS. See *Slander*.